



[4337-15-P]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 100

[167A2100DD/AAKC001030/A0A501010.999900]

RIN 1093-AA20

Waiving Departmental Review of Appraisals and Valuations of Indian Property

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: In 2016, Congress passed the Indian Trust Asset Reform Act (ITARA), which requires the Secretary of the Interior to establish and publish in the Federal Register minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property. This rule establishes the minimum qualifications and implements provisions of ITARA that require the Secretary to accept appraisals and valuations without additional review or approval under certain circumstances.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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I. Background

On June 22, 2016, the Indian Trust Asset Reform Act, Pub. L. 114-178, was signed into law. Title III of the Act requires the Department of the Interior (Interior) to establish minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property and allow an appraisal or valuation by a qualified person to be considered final without being reviewed or approved by Interior.

On September 22, 2016, Interior published a proposed rule (81 FR 65319) to implement ITARA and requested public comments for 60 days. This final rule implements ITARA and responds to the comments received on the proposed rule. This rule establishes the minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property and allows an appraisal or valuation by a qualified appraiser to be considered final without being reviewed or approved by Interior.

The Act also requires appraisals and valuations of Indian trust property to be administered by a single administrative entity within Interior. This rule is finalized under the Office of the Secretary within the Department of the Interior to allow for flexibility if another entity or agency within Interior is designated the single entity to administer appraisals and valuations of Indian trust property.

II. Summary of Final Rule

This rule establishes a new Code of Federal Regulations (CFR) part to establish the minimum qualifications for appraisers, employed by or under contract with an Indian tribe or individual Indian, to become qualified appraisers who may prepare an appraisal or valuation of Indian property that will, in certain circumstances, be accepted by the Department without further review or approval. The final rule clarifies that, because the Department is not reviewing and approving the appraisal or valuation, it is not liable for any deficiency or inaccuracy in the appraisal or valuation.

Subpart A, General Provisions, defines terms used in the regulation, describes the purpose of the regulation, and provides the standard Paperwork Reduction Act compliance statement. The terms are defined to include, in the context of this regulation, any property that the U.S. Government holds in trust or restricted status for an Indian tribe or individual Indian, to include not just land, but also natural resources or other assets. Other important terms include “appraisal,” “valuation,” and “qualified appraiser.” Consistent with the statutory direction, the purpose of the regulations is written broadly, to include appraisals or valuations of any Indian trust property, including:

- Appraisals and valuations of real property;

- Appraisals and valuations of timber, minerals, or other property to the extent they contribute to the value of the whole property (for use in appraisals and valuations of real property); and
- Appraisals and valuations of timber, minerals, or other property separate from appraisals and valuations of real property.

Subpart B, Appraiser Qualifications, establishes the minimum qualifications an appraiser must meet to be considered a “qualified appraiser” and establishes that the Secretary must verify that the appraiser meets those minimum qualifications.

This subpart requires that the verification information be submitted contemporaneously with the appraisal or valuation so that the Secretary can verify that the appraiser is a qualified appraiser at that point in time.

Subpart C, Appraisals and Valuations, notes that some transactions requiring Secretarial approval under titles 25 and 43 of the Code of Federal Regulations (e.g., 25 CFR part 162, Leases and Permits; 25 CFR part 169, Rights-of-Way on Indian Land) require the submission of appraisals and valuations to the Department. This subpart also sets out the circumstances in which the Department will forego review and approval of the appraisal or valuation. The rule requires submission of the appraisal or valuation to the Department regardless of whether the Department will be reviewing and approving the appraisal or valuation. This requirement is included because the Department must use the results of the appraisal or valuation in completing the transaction requiring Secretarial approval.

The rule requires the Department to forego review and approval of the appraisal or valuation and consider the appraisal or valuation final if three conditions are met: (1) the appraisal or valuation was completed by a qualified appraiser; (2) the Indian tribe or individual

Indian expressed their intent to waive Departmental review and approval; and (3) no owner of any interest in the Indian property objects to the use of the appraisal or valuation without Departmental review and approval. The first condition is clearly required by ITARA. The second condition is implied by ITARA. The number of individual Indian owners of fractionated tracts that must express their intent to waive Departmental review and approval, under the second condition, would depend upon the underlying title 43 or title 25 requirements. For example, if the underlying transaction is a right-of-way, then the owners of a majority of the interests in the tract must express their intent to waive Departmental review and approval, consistent with the general consent requirements in 25 CFR part 169. The third condition, that no Indian property owner objects, is necessary to address situations where one or more owners of the tract still want Departmental review and approval of the appraisal or valuation, consistent with our trust responsibility to all owners of the Indian trust property.

This subpart exempts certain transactions, thereby requiring Departmental review of the appraisal or valuation. The exempted transactions include transactions under any legislation expressly requiring the Department to review and approve an appraisal or valuation, such as the Land Buy Back Program under the Claims Resolution Act of 2010 (Pub. L. 111-291), and purchase at probate under 43 CFR part 30, because the judge will not be in a position to verify an appraiser's qualifications. The Department will also review any appraisal for an acquisition by the United States.

III. Responses to Comments

A. General Support for the Rule

Several tribes stated their support of the ITARA provision to eliminate the current requirement for Office of Appraisal Services review to reduce delays. One tribe noted the

importance of the Department accepting and approving, without further review or delay, any appraisal or valuation that complies with the appraiser's qualification standards and is satisfactory to the Indian property owner. Another tribe stated its support for the minimum qualifications for appraisal services.

Response: This rule allows the Department to carry out Congress's specific direction in ITARA that the Department should not review or approve appraisals submitted by qualified appraisers.

B. Minimum Qualifications for Appraisers

One tribe stated that the qualifications for individuals to prepare appraisals and valuations of Indian property should be the same that apply to professional appraisers in the private sector.

Response: The Department agrees with this comment and has strived to match the requirements for qualified appraisers to those requirements currently in place for its own appraisers and contracted appraisers.

One tribe stated the procedures should require: (1) Departmental approval of appraisers who satisfy minimum qualifications; (2) Departmental review within a specified period with a default of automatic approval; (3) minimum requirements for qualifications of review appraisers.

Response: This rule establishes minimum qualifications for appraisers conducting appraisals that do not need Departmental review. The Department will review the appraiser's qualifications to determine whether the appraiser meets the minimum qualifications when the appraisal is submitted. The tribe's request for a Departmental review of the appraiser's qualifications within a specified period, with a default of automatic approval, is not necessary

because the process of ensuring an appraiser meets the minimal qualifications is intended to be less burdensome and faster than a review of the appraisal.

One commenter stated that the rule's minimum qualifications for appraisers should be more stringent and the rule should require appraisals to be performed by a multidisciplinary group of experts who: (1) meet all the criteria in the rule; (2) have completed a mandatory valuation ethics training course; and (3) have collaborated with Native American groups to better understand the cultural value of the lands in question. This commenter stated that the appraisal must account for cultural values of those with sacred ties to the ecosystems and lands. The commenter reasoned that the process of assigning value to an area is subjective, and using the knowledge and methodologies of a diverse group of experts and stakeholders would prevent a single individual from the power to assign a monetary value to sacred land.

Response: The final rule does not incorporate the commenter's suggestions because an appraisal or valuation is, by definition, the opinion as to a property's value of a single person qualified to give such an opinion, rather than, as suggested by the commenter, the opinion of a multi-disciplinary team. The final rule's requirements for State licensure, good standing, and compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) address the commenter's other concerns.

The Appraisal Institute stated that requiring generally accepted standards in the appraiser qualification criteria would enhance credibility and reliability of the appraisals being performed.

Response: Section 100.200 of the rule requires qualified appraisers to meet USPAP rules and provisions applicable to appraisers, which are generally accepted standards; therefore, no change to the final rule is necessary in response to this comment.

1. State Licensing as a Qualification

Several tribes strongly objected to relying on State licensing for appraisers and a determination of good standing by State regulatory agencies, and asserted that the rule should instead rely on tribal licensing and require compliance with tribal laws and regulations.

Response: Under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 3331 *et seq.*, each U.S. State or territory has a real estate appraiser regulatory agency that is responsible for licensing and certifying real estate appraisers and supervising their appraisal-related activities, as required by Federal law. The Appraisal Subcommittee of the Federal Financial Institutions Examination Council has oversight authority over the States and The Appraisal Foundation to ensure the minimum qualifying criteria to license and certify real estate appraisers are implemented and that appraisers are held to a professional set of ethical standards. The final rule does not require compliance with tribal appraiser certification in lieu of State certification because, currently, State certification programs are the industry standard under FIRREA. In fact, the Department is unaware of a currently operating tribal appraiser certification program and requires State certification of its own appraisers and contractor appraisers. Tribes are welcome to adopt their own standards for appraisers; however, for the Department to accept the appraisal or valuation without further review, it would have to review the tribe's standards contemporaneously with the appraisal. In other words, only the State license and standards allow the Department to accept an appraisal without further review at this time.

The DOI Self-Governance Advisory Committee and several tribes stated that tribes should be permitted to adopt their own standards consistent with USPAP and Federal law to meet the unique needs tribal Nations have in assuming appraisal responsibilities.

Response: This rule provides that it will accept an appraisal or valuation without Departmental review only if the appraiser is a “qualified appraiser,” meaning, among other things, that the appraiser has a Certified General Appraiser license in the State in which the property is located, and complies with USPAP provisions applicable to appraisers. Tribes are welcome to adopt their own standards for appraisers; however, for the Department to accept the appraisal or valuation without further review, it would have to review the tribe’s standards contemporaneously with the appraiser qualifications that are being submitted with the appraisal under this part.

A tribal member suggested that tribes should have their own appraisal process so they don’t have to pay \$2,500 for an appraisal that reveals a property value of much less.

Response: This rule will allow for the use of qualified appraisers at whatever cost they are available. To the extent the commenter is addressing the regulation’s requirement to use appraisers qualified to conduct commercial appraisals even where the property may only require qualifications to conduct a residential appraisal, it is important to keep in mind that this rule does not require such appraiser qualifications in all instances. Rather, this rule requires those heightened appraiser qualifications only if the appraisal is being submitted for Departmental acceptance without further Departmental review.

2. General Appraiser Certification as a Qualification

One tribe stated that not all appraisers have the General Appraiser certification (e.g., residential appraisers), and that it is an additional burden to require it because it is hard to find appraisers on reservations and will be even harder to find appraisers with the General Appraiser certification. This tribe stated that, instead, the type of land being appraised should drive the qualifications for the appraiser. Likewise, another tribe stated that the use of a “Certified General Appraiser” in certain geographic areas, for example in the State of Oklahoma, would be futile and suggests instead requiring use of a “licensed appraiser.” Alternatively, the tribe suggests adding that the requirement for a Certified General Appraiser be waived if the tribe has made diligent efforts but has been unable to procure the services of a Certified General Appraiser.

Response: The General Appraiser license is required for a “qualified appraiser” because these are appraisers that can submit any appraisal without further Departmental review or approval. If an appraiser has a license specific to residential appraisals, the appraiser may conduct its residential appraisals under the license, but the Department must review the appraisal to ensure that the appraisal is within the scope of the appraiser’s license.

3. Qualification for Specialty Appraisals

A tribe stated that the appraiser should have expertise in valuation of resources involved in the appraisal. Likewise, the Indian Land Tenure Foundation noted that the appraiser performing specialty appraisals (timber and minerals) must have demonstrated the specialized skills.

Response: Section 100.200(a)(3) requires compliance with USPAP competency requirements applicable to the type of property being appraised or valued, including competency in timber and mineral valuations if applicable to the subject property

A tribal commenter stated that the rule should require appraisers to have an understanding of general Federal Indian law and special obligations under tribe-specific relationships.

Response: The rule does not impose the requirement for appraisers to have expertise in Federal Indian law or tribal relationships because this expertise is not necessary to conduct an accurate appraisal and, if required, would likely narrow the universe of qualified appraisers to an untenable supply level.

4. Other Certifications

A tribal member suggested requiring appraisers to be certified under the Certified Federal Surveyor Program from the Bureau of Land Management.

Response: The final rule does not incorporate this suggestion because the Certified Federal Surveyor program applies to surveyors, rather than appraisers.

5. Professional Designation of Appraisers

The Appraisal Institute urged the Department to include in the minimum qualifications for appraisers recognition of professional designations from nationally recognized appraisal organizations that confer competency-based designations. The commenter suggested that a professional designation is necessary to ensure appraisers have experience with appraisal review because the Department will not be reviewing the appraiser's appraisals. The Appraisal Institute

stated that eliminating Departmental review of the appraisal dramatically increases risks and likened the practice to performing accounting functions without any audit processes.

Response: The final rule does not impose the additional requirement requested by the commenter for professional designation from a nationally recognized appraisal organization because the rule already requires qualified appraisers to have experience with appraisal review, as demonstrated by a State-issued appraisal license, good standing with the State appraiser regulatory agency, and compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) rules, including competency provisions. *See* 43 CFR 100.200. The additional requirement is unnecessary and the Department does not require this designation for its own contractors conducting appraisals.

6. Database of Qualified Appraisers

A tribe suggested having appraisers register online for searchability by those who would like to hire them to do appraisals and valuations.

Response: The Appraisal Subcommittee has an online, searchable database of appraisers, and most State appraisal boards have searchable databases of appraisers licensed by that State.

7. Review of an Appraiser's Minimum Qualifications

One tribe stated that periodic review of qualifications should be required as standards and experience with individual appraisers change over time.

Response: The rule requires the appraiser to submit qualifications with each appraisal to allow for Department's review of the appraiser's qualifications.

B. Appraisals

A tribal member stated that there is a fundamental misunderstanding as to what an appraisal is: specifically, that an appraisal is not equivalent to value; rather, it is an expert opinion to inform the owners (the beneficiary) and trustee as to what somebody's opinion of fair market value is.

Response: The Department agrees with this comment.

1. Differentiating Appraisals from Valuations

A tribal member asked whether an appraisal and a valuation are different, and whether either evaluates tribal rights such as water rights or gathering rights for medicine.

Response: The final rule defines “appraisal” and “valuation” slightly differently; however, whether either evaluates tribal water rights or other rights will be determined by the statute and regulations authorizing the transaction rather than this regulation.

Another tribal member stated that allotted land makes up most of the workload for appraisals, but under ILCA, only an “estimate of value” rather than an appraisal, is needed for a gift, sale, or exchange. He suggested instead defining what an “estimate of value” is.

Response: This rule is establishing minimum qualifications for appraisers who may complete appraisals that the Department will rely upon without further review. The rule's definition of “valuation” could include the “estimate of value” mentioned by the commenter. If that “estimate of value” is prepared by an appraiser who meets the minimum qualifications of this rule, then the Department would accept the estimate of value without further review.

2. Appraisal Standards

Several tribes recommended that any appraisal or valuation of Indian property be in accordance with authority in title 25 of the CFR, appraisal standards in the current edition of USPAP, and use of appraisal industry-recognized valuation methods and techniques.

Response: This rule does not establish appraisal standards. The standards for appraisals or valuations of Indian property are already set out in memoranda of understanding that govern tribes with a self-governance compact or contract.

Several tribes suggested requiring adherence to the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) if the transaction is to the United States.

Response: The final rule, at § 301(b)(2), clarifies that transactions transferring Indian property to the United States where the UASFLA applies are exempt from this rule.

The Appraisal Institute stated that the proposed regulations should include a requirement that the appraisal or valuation reflect market value (as opposed to another value, such as “use value”) because market value is most appropriate to determine “just compensation” for a public use and otherwise because the standards have long been held as fair, reasonable, and just by Federal and local governments as the basis for Federal land acquisitions, land leases, rights-of-way, and other dispositions or uses.

Response: This rule does not establish appraisal standards. The statute and regulations governing the particular transaction would dictate the standard for value to be used in the appraisal. To make the purpose of this new CFR part more transparent, the final rule updates the title of the CFR part from “Appraisals and Valuations of Indian Property” to “Waiving

Departmental Review of Appraisals and Valuations of Indian Property.” Likewise, the final rule updates the subtitle C heading to “Appraisals and Valuations; Departmental Review and Waivers.”

One commenter stated that there is no rule that could guarantee a credible appraisal because the client may dictate conditions and instructions to an appraiser that affects the result, so the appraisal review serves as a check and ensures the client’s instructions adequately support approval for the conveyance.

Response: The Department agrees with this comment. In ITARA, Congress allowed for reliance on an appraisal without Departmental review of the appraisal.

One tribe stated requirements for formal appraisals for transactions for negotiated sales involving informed consent of owners should be clarified.

Response: This suggestion is outside the scope of the authority Congress granted for rulemaking in ITARA. This rule does not specifically address requirements for appraisals regarding negotiated sales; this rule establishes the minimum qualifications for an appraiser in those situations where the appraisal of Indian property will not be subject to Departmental review.

C. Process for Requesting Waiver of Departmental Review of Appraisal

The Indian Land Tenure Foundation stated that a waiver of Departmental review should come after the appraisal is complete and not in the submission of the appraisal request.

Response: The Department agrees; § 100.203 requires submission of the request for waiver of Departmental review to accompany the appraisal.

The Foundation also stated that the practice of requiring the appraiser to attach a certificate of qualifications to each appraisal is not a burden and should be required.

Response: The Department agrees; the person or entity submitting the appraisal has the option to waive Departmental review or not. If the submitter chooses to seek a waiver of Departmental review, then a certificate of the appraiser's qualifications must be included.

D. Applicability of the Rule

The American Gas Association, Interstate Gas Association of American, and the Utilities Group stated that ITARA was limited to those transactions where statutes expressly require an appraisal or valuation (such as the Indian Land Consolidation Act) and should not apply to all potential transactions under titles 25 and 43 (e.g., rights-of-way and renewals). These commenters pointed out that Section 305 of ITARA [25 U.S.C. 5635(c)(2)] applies only to those Indian land transactions “for which an appraisal or valuation is required,” while proposed § 100.300 would require an appraisal or valuation for all transactions requiring Secretarial analysis and approval under titles 25 and 43 of the CFR. The gas associations suggested addressing this by revising §§ 100.300 and 100.301 to state that appraisals and valuations must be submitted for transactions “requiring appraisals as part of their authorization statute” and where “an appraisal or valuation of the property is expressly required by the statute authorizing the transaction.” These commenters stated that the automatic approval does not serve either tribes’ or applicants’ interest in transactions under statutes other than those specifically requiring an appraisal, for example, where Congress already addressed the standard and process for valuation by requiring Secretarial approval of just compensation.

Response: ITARA does not discuss when an appraisal or valuation is required and this rulemaking does not affect whether a particular transaction requires an appraisal or valuation. The final rule does, however, refine § 100.300 to clarify that appraisals and valuations are not required for all transactions requiring Secretarial approval under titles 25 and 43 of the CFR.

Several utilities and utility associations expressed concerns about the effect of the rule on projects and rights-of-way that serve the public's energy needs. Some stated that the rule should not apply to rights-of-way transactions because those transactions have their own statutory scheme. Some also stated that the rule conflicts with existing statutes governing rights-of-way across Indian land, and specifically the statutory requirement for "the payment of such compensation as the Secretary of the Interior shall determine to be just," because the rule would allow an appraisal to be deemed final without the Secretary assuring just compensation. *See* 25 U.S.C. 325.

Response: As discussed above, the statute and regulations governing the particular transaction determine whether an appraisal or valuation is required for that transaction. The Secretary may use an appraisal or a valuation as a tool for determining whether there is "just compensation" under the cited statute. For rights-of-way, the regulations at 25 CFR part 169 establish how the Secretary determines whether there is "just compensation" and provides for use of an appraisal or valuation as a tool for that determination under certain circumstances. This rule merely allows for the use of an appraisal or valuation without Departmental review of the appraisal or valuation under ITARA (as opposed to Departmental review of whether there is "just compensation").

Several of these utility group commenters stated that, if the rule does apply to rights-of-way transactions, then the rule should require a fair market value as just compensation for rights-of-way and renewals to public entities and utilities that benefit the public interest. Commenters stated that allowing above-market valuations would allow tribes, without monitoring by the Secretary, to attempt to take advantage of the public interest by exploiting the public entities' and utilities' presence on Federal trust land. One commenter likewise stated its concern that the rule will permit tribes to demand in excess of fair market value for renewals of rights-of-way for public entities and public utilities that benefit the public interest. The commenter stated that it made investments in infrastructure in reliance on use of fair market value as the standard for the rights-of-way and renewals under the right-of-way statutory framework requiring just compensation to be fair market value.

Response: These comments are beyond the scope of this rulemaking because this rulemaking addresses only appraiser qualifications for appraisals to be submitted and used without Departmental approval. This rulemaking does not address the standard for the underlying transaction. The statute and regulations governing the particular transaction determine whether fair market value or another standard is required.

E. Other Comments

One tribe opposed the provision in the preamble and discussed at tribal consultation sessions that would have stated that the Department is not liable for approving transactions based on appraisals submitted by a qualified appraisal. The tribe's opposition is to the apparent diminishment of the Federal trust responsibility. This tribe suggested Federal tort claims coverage or some other protection is appropriate to meet the trust responsibility, even where the

tribe operates the program under self-governance. Another tribe stated there should be a presumption of Department liability for inaccurate appraisals unless the Department disapproved the appraisal.

Response: The final rule, at section 304, adds regulatory text to explicitly state the Department's position that it cannot be liable for any deficiency or inaccuracy in the appraisal or valuation in those cases in which the tribe or individual Indian waives Departmental review and approval of the appraisal or valuation. A disclaimer of liability was discussed in the preamble to the proposed rule to inform individuals and entities who elect to forego Departmental review (as authorized by ITARA and this rule) that they are assuming any risks associated with their reliance upon the appraisal or valuation. It would be unreasonable to impose liability on the Department for appraisals the Department did not prepare and was specifically prohibited from reviewing at the direction of the individual or entity submitting it. The trust responsibility does not require that the Government act contrary to law, i.e., to review an appraisal or valuation we are specifically prohibited from reviewing. When an individual or entity chooses to waive Departmental review of the submission, that individual should not expect to be able to obtain relief from the Department for any negative consequences stemming from their use of that appraisal or valuation.

A tribal member suggested having an online training program for appraisers.

Response: This comment is outside the scope of this rulemaking, but the Department suggests checking with the State for any appraiser training programs.

A utilities group and gas associations stated their belief that the rule is a major rule under 5 U.S.C. 804(2) and a significant regulatory action under E.O. 12866. These commenters stated

that a cost-benefit analysis is required because the rule: (1) will result in a major increase in the costs of rights-of-way for state and local governments and public utilities, which will adversely affect industry and millions of consumers and taxpayers nationwide; and (2) will have an aggregate effect of over \$100 million on the economy because of staggering renewal rates and the thousands of miles of rights-of-way across the nation. One gas company commenter also noted the escalating costs of rights-of-way through Indian lands and that the rule exacerbates the issue by failing to make clear that fair market value is the appropriate standard for appraising and valuing rights-of-way for public entities and utilities.

Response: This rule is not a major rule under 5 U.S.C. 804(2) or a significant regulatory action under E.O. 12866 because the rule addresses only whether the Department will review the appraiser's qualifications or will review each individual appraisal. The contents or use of any particular appraisal or group of appraisals for a particular type of transaction is speculative and beyond the scope of this regulation.

One commenter stated that if the proposed rule violates a treaty, then it should not go into effect.

Response: The Department is unaware of the rule violating any treaty.

A few commenters noted there has been, and will be, an increase in the demand for appraisals due to the Land Buy-Back Program and the purchase at probate provision.

Response: While these commenters may be correct regarding the demand for appraisals, this rule exempts appraisals conducted under the Land Buy-Back Program and the purchase at probate provisions of the American Indian Probate Reform Act of 2004.

One tribe stated that development and use of mass appraisal systems and use of qualified third-party appraisers should be encouraged because there is a delay in Departmental review and approval of appraisals that has resulted in lost opportunities and repetitive appraisals because their longevity is limited.

Response: The portion of the comment regarding mass appraisal systems is outside the scope of this rulemaking. This rule allows the use of qualified third-party appraisers.

A tribal attorney stated that the rule should add a requirement to allow beneficiaries to view the work papers in appraisal reports.

Response: This suggestion is outside the scope of the authority Congress granted for rulemaking in ITARA. Further, the Department was unable to identify legal authority to require the release of information under the control of the appraiser-client relationship.

A tribal attorney stated that the rule should include language that appraisals will not expire.

Response: This suggestion is outside the scope of the authority Congress granted for rulemaking in ITARA.

A tribal member suggested a central website for value of the land.

Response: This suggestion is outside the scope of the authority Congress granted for rulemaking in ITARA and may pose Privacy Act issues.

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and any economic effects on small entities (e.g., the cost to obtain an appraiser license) would be incurred as part of their normal cost of doing business.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have identified substantial direct effects on federally recognized Indian tribes that will result from this rulemaking. Tribes may be substantially and directly affected by this rulemaking because it allows for the submission of appraisals for transactions involving Indian property without Departmental review and approval. As such, the Department consulted with tribes on this rule as part of the consultation sessions addressing ITARA and hosted listening sessions with Indian tribes and trust beneficiaries at:

- August 17, 2016 – Listening session at the Indian Land Workgroup Group Symposium, Green Bay, Wisconsin
- August 22, 2016 – Tribal consultation in Albuquerque, New Mexico
- August 26, 2016 – Tribal consultation in Minneapolis, Minnesota
- August 29, 2016 – Tribal consultation in Seattle, Washington
- August 31, 2016 – Tribal consultation in Billings, Montana
- September 7, 2016 – Tribal consultation in Tulsa, Oklahoma
- September 9, 2016 – Tribal consultation in Sioux Falls, South Dakota
- September 12, 2016 – Tribal consultation in Palm Springs, California
- September 19, 2016 – Tribal consultation by teleconference
- September 29, 2016 – Tribal consultation in Window Rock, Arizona
- October 4, 2016 – Tribal consultation in Rapid City, South Dakota

These dates and locations were announced in the Federal Register. *See* 81 FR 47176 (July 20, 2016), as corrected by 81 FR 51210 (August 3, 2016). The “Responses to Comments” section above summarizes comments received on the rule and how this final rule addresses those comments.

I. Paperwork Reduction Act

This rule contains an information collection that requires approval by OMB. The Department is seeking approval of a new information collection and a revision to an existing regulation, as follows.

OMB Control Number: 1076–0188.

Title: Appraisals & Valuations of Indian Property, 43 CFR 100.

Brief Description of Collection: The Department is proposing to establish minimum qualifications for appraisers of Indian property that require the submission of the appraiser's qualifications to the Department for verification. Submission of the appraisal or valuation itself is already authorized by other OMB Control Numbers under the associated 43 CFR or 25 CFR part (for example, the submission of appraisals for leasing of Indian land is included in the lease information collection authorized by OMB Control Number 1076-0181).

Type of Review: New collection.

Respondents: Individuals and Private Sector.

Obligation to Respond: To Obtain or Retain a Benefit

Number of Respondents: 155.

Number of Responses: 465

Frequency of Response: 3 per year, on average

Estimated Time per Response: One hour.

Estimated Total Annual Hour Burden: 465 hours.

Estimated Total Annual Non-Hour Cost Burden: \$0.

A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a

currently valid OMB Control Number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

L. E.O. 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not an E.O. 13771 regulatory action because it imposes no more than *de minimis* costs.

List of Subjects in 43 CFR Part 100

Indians, Indians-claims, Indians-lands, Mineral resources.

For the reasons given in the preamble, the Department of the Interior amends 43 CFR subtitle A, by adding part 100 to read as follows:

TITLE 43—Public Lands; Interior

Subtitle A – OFFICE OF THE SECRETARY OF THE INTERIOR

Department of the Interior

PART 100—WAIVING DEPARTMENTAL REVIEW OF APPRAISALS AND VALUATIONS OF INDIAN PROPERTY

Subpart A – General Provisions

Sec.

- 100.100 What terms should I know for this part?
- 100.101 What is the purpose of this part?
- 100.102 Does this part apply to me?
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Subpart B – Appraiser Qualifications

- 100.200 What are the minimum qualifications for qualified appraisers?
- 100.201 Does a qualified appraiser have authority to conduct appraisals or valuations of any type of Indian property?
- 100.202 Will the Secretary verify the appraiser's qualifications?
- 100.203 What must the Tribe or individual Indian submit to the Secretary for verification of the appraiser's qualifications?
- 100.204 When must the Tribe or individual Indian submit a package for Secretarial verification of appraiser qualifications?

Subpart C – Appraisals and Valuations; Departmental Review and Waivers

- 100.300 Must I submit an appraisal or valuation to the Department?
- 100.301 Will the Department review and approve my appraisal or valuation?
- 100.302 May I request Departmental review of an appraisal even if a qualified appraiser completed the appraisal or valuation?
- 100.303 What happens if the Indian Tribe or individual Indian does not agree with the submitted appraisal or valuation?
- 100.304 Is the Department liable if it approves a transaction for Indian property based on an appraisal or valuation prepared by a qualified appraiser?

AUTHORITY: 5 U.S.C. 301; Pub. L. 114-178.

Subpart A – General Provisions

§ 100.100 What terms I should know for this part?

Appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Appraiser means one who is expected to perform an appraisal or valuation competently and in a manner that is independent, impartial, and objective.

Indian means:

(1) Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner as of October 27, 2004, of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

Indian property means trust property or restricted property.

Indian tribe means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Land Buy-Back Program for Tribal Nations means the program implementing the land consolidation provisions of the settlement agreement in *Cobell v. Salazar*, No. 1:96CV01285-JR (D.D.C.), as confirmed by Congress in the Claims Resolution Act of 2010 (Pub. L. 111-291).

Qualified appraiser means an appraiser that is authorized to prepare an appraisal or valuation of Indian property because he or she meets the minimum qualifications of this part.

Qualifications statement means a written overview of an appraiser's education, professional history and job qualifications, providing an indication of an appraiser's competency to perform specific types of assignments. The qualifications may include information regarding

education (degrees and educational institutions or programs); professional affiliations, designations, certifications, and licenses; work experience (including companies or organizations, the dates of employment, job titles and duties, and any service as an expert witness); awards and publications; types of properties appraised; types of appraisal and valuation assignments; and clients.

Restricted property means lands, natural resources, or other assets owned by Indian tribes or individual Indians that can only be alienated or encumbered with the approval of the United States because of limitations contained in the conveyance instrument, or limitations in Federal law.

Secretary means the Secretary of the Interior or an authorized representative.

Trust property means lands, natural resources, or other assets held by the United States in trust for Indian tribes or individual Indians.

Us/we/our means the bureau, agency, or entity within the Department of the Interior that administers appraisals and valuations of Indian property.

Valuation means all other valuation methods or a market analysis, such as a general description of market trends, values, or benchmarks, prepared by a qualified appraiser.

§ 100.101 What is the purpose of this part?

This part describes the minimum qualifications for appraisers, employed by or under contract with an Indian tribe or individual Indian, to become qualified appraisers who may prepare an appraisal or valuation of Indian property that will be accepted by the Department without further review or approval when the Indian tribe or individual Indian waives Departmental review and approval.

§ 100.102 Does this part apply to me?

This part applies to anyone preparing or relying upon an appraisal or valuation of Indian property.

§ 100.103 How does the Paperwork Reduction Act affect this part?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned OMB Control Number 1076-0188. Response is required to obtain a benefit.

Subpart B – Appraiser Qualifications

§ 100.200 What are the minimum qualifications for qualified appraisers?

(a) An appraiser must meet the following minimum qualifications to be a qualified appraiser under this part:

(1) The appraiser must hold a current Certified General Appraiser license in the State in which the property appraised or valued is located;

(2) The appraiser must be in good standing with the appraiser regulatory agency of the State in which the property appraised or valued is located; and

(3) The appraiser must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) rules and provisions applicable to appraisers (including but not limited to Competency requirements applicable to the type of property being appraised or valued and Ethics requirements). This includes competency in timber and mineral valuations if applicable to the subject property.

§ 100.201 Does a qualified appraiser have the authority to conduct appraisals or valuations of any type of Indian property?

All qualified appraisers of Indian property must meet the Competency requirements of USPAP for the type of property being appraised or valued. Competency can be demonstrated by

previous completed assignments on the type of properties being appraised, additional education or training in specific property types, or membership and/or professional designation by a related professional appraisal association or group.

§ 100.202 Will the Secretary verify the appraiser's qualifications?

The Secretary will verify the appraiser's qualifications to determine whether the appraiser meets the requirements of § 100.200.

§ 100.203 What must the tribe or individual Indian submit to the Secretary for a verification of the appraiser's qualifications?

The tribe or individual Indian must submit the following with the appraisal or valuation:

- (a) A copy of the appraiser's current Certified General Appraiser license;
- (b) A copy of the appraiser's qualifications statement;
- (c) The appraiser's self-certification that the appraiser meets the criteria in § 100.200; and
- (d) If the property contains natural resource elements that contribute to the value of the property, such as timber or minerals, a list of the appraiser's additional qualifications for the specific type of property being valued in the appraisal report.

§ 100.204 When must the tribe or individual Indian submit a package for Secretarial verification of appraiser qualifications?

The tribe or individual Indian must submit the package of appraiser qualifications to the Secretary with the appraisal or valuation.

Subpart C – Appraisals and Valuations; Departmental Review and Waivers

§ 100.300 Must I submit an appraisal or valuation to the Department?

Appraisals and valuations of Indian property must be submitted to us if relied upon or required for transactions requiring Secretarial approval under titles 25 and 43 of the CFR (other than those under the Federal Land Policy and Management Act).

§ 100.301 Will the Department review and approve my appraisal or valuation?

(a) The Department will not review the appraisal or valuation of Indian property and the appraisal or valuation will be considered final as long as:

- (1) The submission acknowledges the intent of the Indian tribe or individual Indian to waive Departmental review and approval;
- (2) The appraisal or valuation was completed by a qualified appraiser meeting the requirements of this part; and
- (3) No owner of any interest in the Indian property objects to use of the appraisal or valuation without Departmental review and approval.

(b) The Department must review and approve the appraisal or valuation if:

- (1) Any of the criteria in paragraph (a) of this section are not met; or
- (2) The appraisal or valuation was submitted for:
 - (i) Purchase at probate under 43 CFR part 30;
 - (ii) The Land Buy-Back Program for Tribal Nations;
 - (iii) An acquisition by the United States to which the Uniform Appraisal Standards for Federal Land Acquisitions applies; or
 - (iv) Specific legislation requiring the Department to review and approve an appraisal or valuation.

§ 100.302 May I request Departmental review of an appraisal even if a qualified appraiser completed the appraisal or valuation?

If you do not specifically request waiver of Departmental review and approval under § 100.300(a)(1), the Department will review the appraisal or valuation.

§ 100.303 What happens if the Indian tribe or individual Indian does not agree with the appraisal or valuation prepared by their qualified appraiser?

If the Indian tribe or individual Indian does not agree with the appraisal or valuation prepared by their qualified appraiser, the Indian tribe or individual Indian should not submit the appraisal or valuation under this part.

§ 100.304 Is the Department liable if it approves a transaction for Indian property based on an appraisal or valuation prepared by a qualified appraiser?

The Department is not liable for any deficient or inaccurate appraisal or valuation provided by the tribe or individual Indian that it did not review or approve, even if the Department approved a transaction for Indian property (including but not limited to a lease, grant, sale, or purchase) based on the appraisal or valuation.

Dated: June 20, 2017

James E. Cason,
Associate Deputy Secretary.

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